IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.4.2007

CORAM:

THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA
AND
THE HONOURABLE MR.JUSTICE V.DHANAPALAN

W.P.No.13846 of 2002
& W.P.M.P.No.18703 of 2002

1. The Secretary to Government,
   Home Department,
   Fort St.George, Chennai-9.

2. The Director General of Police,
   Chennai-4. .. Petitioners

vs.

1. R.Alfered Wilson

2. The Registrar,
   Tamil Nadu Administrative Tribunal,
   Chennai-104. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records pertaining to the orders of the Tamil Nadu Administrative Tribunal, dated 9.10.2001 and 2.11.2001 made in O.A.No.3783 of 2001 and quash the same.

For petitioners : Mr.K.Balakrishnan, Addl.G.P
For respondent-1 : Mr.K.Venkataramani, Senior Counsel
for Mr.M.Muthappan

ORDER

(The Order of the Court was made by F.M.Ibrahim Kalifulla,J)

The Secretary to Government, Home Department, Fort St.George, Chennai-9 and the Director General of Police, Chennai-4, are the petitioners herein. The challenge in the Writ Petition is to the orders of the Tamil Nadu Administrative Tribunal, dated 9.10.2001 and 2.11.2001 in O.A.No.3783 of 2001.

2. Brief facts which are required to be stated are that the first respondent herein who was working as Sub-Inspector of Police, was due for promotion to the post of Inspector of Police in the panel year 1999-2000. The crucial date of the panel was 1.6.1999. The panel was prepared on 12.8.1999, in which the first respondent's name was included. However, on

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12.3.2000, he was placed under suspension for his failure to register a criminal case. On 15.3.2000, the charge memo was issued under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules. Therefore, his promotion was with-held for the year 1999-2000. The suspension was revoked and he was reinstated on 20.5.2000. Ultimately, the disciplinary action ended in the punishment of increment cut for a period of one year with cumulative effect, by order dated 30.9.2000. The first respondent preferred an appeal and the appellate authority, namely the Deputy Inspector General of Police, modified the punishment of increment cut as one without cumulative effect, by his order dated 12.12.2000. On a further review to the Director General of Police, the punishment was further modified as one of censure instead of increment cut, by order dated 31.3.2001. The cumulative effect of the above referred to three orders was that there was a punishment of censure as on 30.9.2000. The petitioner was due for promotion for the post of the Inspector of Police in the year 1999-2000 as well as in the year 2000-2001.

3. It is in the above stated background, the first respondent moved the Tamil Nadu Administrative Tribunal, by filing O.A.No.3783 of 2001, for a direction to the petitioners herein to promote the first respondent herein as Inspector of Police in pursuance of the inclusion of his name in the 'C' list of Sub-Inspectors of Police fit for promotion as Inspectors of Police for the year 1999-2000, published by the second petitioner in RC.No.129130/NGB/I/1/99, dated 12.8.1999 without reference to the punishment of censure in P.R.No.90/2000, dated 31.3.2001, and grant him all consequential service and monetary benefits.

4. The Tribunal took the view that since there was no punishment as on the crucial date, namely 1.6.1999, the first respondent's name was included in the panel, he ought not to have been denied promotion right from the year 1999-2000. So holding, the Tribunal directed the petitioners to give promotion to the first respondent as Inspector of Police, based on the inclusion of his name in the year of panel for the year 1999-2000, dated 12.8.1999, with all seniority by virtue of such inclusion and other monetary benefits.

5. Heard Mr.K.Balakrishnan, learned Additional Government Pleader for the petitioners and Mr.K.Venkataramani, learned Senior Counsel appearing for the first respondent.

6. Mr.K.Venkataramani, learned Senior Counsel appearing for the first respondent, while referring to the relevant Government Order in G.O.Ms.No.368, Personnel and Administrative Reforms Department, dated 18.10.1993, fairly stated that by virtue of the Clause contained in the said G.O., namely "if specific charges are framed ... the person concerned shall not be promoted notwithstanding the fact that his name has been included in the panel. The instructions in para (3) above will apply in this case thereafter.", the petitioner may not be eligible for his promotion in the panel year 1999-2000 irrespective of the fact that his name was included in the panel. The learned Senior Counsel however

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contended that the subsequent guidelines issued by the Government, in the proceedings of the Personnel and Administrative Reforms (s) Department, dated 20.10.1997, with particular reference to paragraph II relating to the effect of punishment of inclusion in the panel, wherein Clause (2) specifically states that the punishment of censure in order to operate as a bar for promotion of a Government servant, such punishment of censure should have been passed within a period of one year prior to the crucial date. The relevant clause reads as under:

> "2) Any punishment, other than 'Censure' imposed on an Officer within a period of five years prior to the crucial date and punishment of 'Censure' within a period of one year prior to the crucial date should be held against the officer. In such a case the officer's name should be passed over."

7. As far as the currency of punishment is concerned, by the subsequent proceedings dated 10.6.1998, the Government has made it clear that the punishment of censure has no currency.

8. A combined reading of the above two Government Orders dated 20.10.1997 and 10.6.1998, makes it clear that if censure is to operate as a bar for promotion, such censure as a punishment should have been passed one year prior to the crucial date. Since the censure has no currency, it cannot operate as a bar during the relevant panel year.

9. In the above said background, when we consider the case of the first respondent, though the initial punishment of increment cut with cumulative effect was passed on 30.9.2000 and by a review, the authority, in his order dated 31.3.2001, modified the same as one of censure, that should date back to 30.9.2000. The crucial date in the case of the first respondent would then be 1.6.2000 for the panel year 2000-2001. As the date of punishment was 30.9.2000 and since there was no currency of punishment, and if at all, it has to operate as bar, such censure should date back to the period prior to 1.6.2000, since on 15.3.2000, the petitioner was issued with a charge memo. By virtue of paragraph II(iv)(5) of G.O.Ms.No.368, Personnel and Administrative Reforms Department, dated 18.10.1993, relating to "consideration of persons against whom enquiries are pending and specific charges have been framed or charge sheet has been filed in criminal cases", the first respondent was not entitled for the promotion to the post of Inspector of Police for the year 1999-2000. Since the punishment of censure dates back to 30.9.2000, it did not come within the relevant period for consideration in order to deny him his promotion for the panel year 2000-2001.

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10. Therefore, in the light of the said position, the order of the Tribunal in directing the petitioners herein to accord promotion to the first respondent in the panel year 1999-2000, cannot be sustained. However, the first respondent is definitely entitled for his promotion for the subsequent year, namely 2000-2001, if there is no other impediment in granting the said promotion in the said year.

11. The Writ Petition is partly allowed, setting aside that part of the order of the Tribunal in granting promotion right from the year 1999-2000. Instead, the promotion of the first respondent to the post of Inspector of Police shall be granted for the year 2000-2001 with all seniority and other monetary benefits. No costs. W.P.M.P. is closed.

cs

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

Copy to

1. The Secretary to Government,
   Home Department,
   Fort St.George, Chennai-9.

2. The Director General of Police,
   Chennai-4.

+1 cc to Government Pleader sr.No.27772

+1 cc to Mr.T.Ayngaraprabhu, Advocate Sr.No.27648.

KG(CO)
dcp/30.4.07

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